



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUN 01 2001

REPLY TO THE ATTENTION OF

W-15J

Ms. Susan Sylvester
Division of Water
Wisconsin Department of Natural Resources
Post Office Box 7921
Madison, Wisconsin 53707-7921

Re: U.S. EPA's Comments on "Sewer Overflows in Wisconsin - A Report to the Natural Resources Board"

Dear Ms. Sylvester:

This letter provides the United States Environmental Protection Agency's (USEPA) comments on the Wisconsin Department of Natural Resources' (WDNR) "Sewer Overflows in Wisconsin - A Report to the Natural Resources Board" (Report).

As discussed in my letter of March 15, 2000, USEPA is encouraged that WDNR is actively working to address sanitary sewer overflow (SSO) problems in the State of Wisconsin. In particular, we commend the actions you have taken to identify SSOs and to establish permit requirements for communities tributary to the Milwaukee Metropolitan Sanitary District (MMSD). We believe that these tributary communities will be a very important part of the solution to the SSO problem in the MMSD service area. We are also encouraged by WDNR's proposed efforts in the areas of capacity assurance, and system management, operation, and maintenance.

We have the following comments related to the Report and to WDNR's rules and policies related to SSOs and bypass, and how the State should consider responding to SSO violations.

Legal Requirements Pertaining to Discharges From Sanitary Sewer Systems

Discharges from municipal sanitary sewer systems are prohibited unless authorized by an National Pollutant Discharge Elimination System (NPDES) permit. Permits authorizing discharges from such systems must contain technology-based effluent limitations based upon secondary treatment and, to the extent that the discharge is at a level that will cause, have the reasonable potential to cause, or contribute to an excursion of water quality standards, appropriate water quality based effluent limitations, in numeric and/or narrative form.

Alternatively, some permits have characterized discharges from municipal sanitary sewer systems as "bypasses" subject to conditions consistent with those governing "bypass" at 40 C.F.R. § 122.41(m). Among other things, those provisions prohibit bypasses unless there are "no feasible

alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime." In addition, adequate back-up equipment should be installed in the exercise of reasonable engineering judgment to prevent a bypass. The "no feasible alternatives" provisions of 40 C.F.R. § 122.41(m) require, among other things, that consideration be given to the feasibility of additional construction for any bypasses that occur because of inadequate capacity.

The Report contemplates a design storm approach as a basis for an SSO control program within the MMSD service area. At the present time, we need more information to judge the merits of this approach. Our concern is to assure that the permitting approach chosen for the MMSD system either will result in all discharges from the sanitary sewer system meeting secondary treatment and water quality-based requirements, or will result in such discharges that are approvable under the bypass regulation. We would like to continue discussions with you about what measures MMSD should be taking to assure that these results are attained. These measures should include a full range of options, including infiltration and inflow removal, collection system management operation and maintenance, as well as providing adequate storage, conveyance, and treatment capacity.

State Rules Relating to Bypass and Sanitary Sewer Overflows

As noted in the Report, WDNR's rules at NR 205.07 are similar to, but not the same as Federal regulations with respect to their bypass provisions. We believe the differences are as follows:

While NR 205.07 includes general prohibitions on unscheduled and scheduled bypassing, the exceptions to this prohibition are more liberal than allowed under Federal law. The Federal regulation at 40 CFR § 122.41(m)(4)(i) states that bypass is prohibited, and the Director may take enforcement action unless each of the following three conditions apply:

- the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- there were no feasible alternatives to the bypass; and
- the permittee submitted the required reporting.

In contrast, NR 205.07(u) allows bypasses under any of the following situations:

- inadvertent bypasses resulting from equipment damage or temporary power failure;
- unavoidable bypasses necessary to prevent loss of life or severe property damage; or
- bypasses of excessive storm drainage or runoff that would damage facilities otherwise necessary for compliance with limitations or prohibitions in the permit.

Our chief concern with NR 205.07 is the lack of a "feasible alternatives" test. Such a test might show that some bypasses currently allowed under NR 205.07(u) could be avoided through implementation of feasible alternatives. For example, certain bypasses caused by excessive storm drainage may be avoided through proper preventive maintenance, adequate inflow and infiltration removal and planning for adequate wastewater transport and treatment capacity.

In addition, the first and third criteria under NR 205.07(u) do not, in themselves, represent sufficient grounds for allowing bypasses under Federal regulation. For example, temporary power failure is not a sufficient basis for allowing bypasses, inasmuch as it is generally feasible to provide auxiliary power sources in the event of temporary power failure. Similarly, as noted above, there may be feasible means by which to avoid bypasses caused by storm drainage. NR 205.07(u) also lacks criteria for reporting that are prerequisite to allowing bypasses under Federal regulation. Finally, NR 105.07(u) would allow bypasses meeting any individual criterion. Federal regulations require that all criteria are met in order to allow a bypass.

We recommend you proceed with rulemaking in order to correct these discrepancies between State and Federal requirements. Permits issued prior to final rulemaking should be consistent with Federal requirements, thereby avoiding the possibility of a USEPA permit objection. We note that this is a statewide issue.

We have two further comments related to WDNR's bypass rules:

- The scheduled bypass provision at NR 205.07 prohibits bypasses related to construction or normal maintenance, unless authorized in writing by WDNR. Federal regulations require special reporting of anticipated bypasses (40 C.F.R. § 122.41(m)(3)(i)), but do not allow such bypasses, unless they meet the tests under 40 C.F.R. § 122.41(m)(4)(1), as discussed above. We recommend that WDNR clarify in its rules that any exceptions to the scheduled bypasses prohibition must comply with the conditions of 40 C.F.R. § 122.41(m)(4)(i). We also note that Federal regulations at 40 C.F.R. § 122.41(m)(2) allow bypasses that do not cause effluent limitations to be exceeded, but only if the bypasses are for essential maintenance. Such bypasses are not subject to the general bypass prohibition or reporting requirements. WDNR may wish to include such a provision in its rules.
- The Report includes a discussion on internal diversions. USEPA has been examining this issue, and the relationship between this practice and the Federal bypass prohibition. Enclosed is a letter from Diane Regas, Acting Administrator for Water, which includes a discussion of USEPA's current thinking on this topic. Note that there are a number of criteria that USEPA views must be met in order to allow internal diversions. We believe that some of these are not in place currently with respect to the MMSD permit. For instance, the permit does not specifically recognize the practice of internal diversion, nor does it establish restrictions on such diversions.

Appropriate Response to Unpermitted Discharges and Unapproved Bypasses

One of the major catalysts for the WDNR Report is the ongoing occurrence of SSOs in the MMSD service area despite substantial investments in the MMSD's sewage collection and treatment infrastructure. Under Federal regulations, these SSOs, whether unpermitted discharges or unapproved bypasses, are considered instances of noncompliance that warrant enforcement action. Specifically, under 40 C.F.R. § 123.45, the state director is required to report all major facilities that meet criteria for reportable non-compliance (RNC) quarterly to the Administrator of

USEPA. This report is referred to as the quarterly noncompliance report or QNCR. RNC criteria include, among other things, any unpermitted discharge or unapproved bypass which causes or has the potential to cause water quality or health problems, such as beach closings.

It is our understanding, based on the Report and information submitted by MMSD, that both of these conditions exist in the Milwaukee area. Further, consistent with our QNCR Guidance Manual, and revisions thereto, these violations also are to be considered significant noncompliance (SNC). Unlike RNC, SNC is not a regulatory distinction; rather, it is a program definition used for management purposes and to identify violations that USEPA believes merit priority attention. Consistent with the QNCR Guidance Manual, unapproved bypasses and unpermitted discharges meet that definition. USEPA's Enforcement Management System (EMS) Guide provides a method of setting priorities to address discharges of untreated sewage from SSOs, which assist in determining the appropriate response to unpermitted discharges or unapproved bypasses from sanitary sewers. The most current EMS guidance was issued March 7, 1996, and is referred to as "Chapter X: Setting Priorities for Addressing Separate Sanitary Sewers."

The purpose of the QNCR and EMS is to enable the states and USEPA to determine when and what type of responses to SSO violations are warranted so that actions are consistent, timely, and appropriate. Even more importantly, the QNCR serves as a public document enabling citizens and interested groups to monitor progress of NPDES facilities and the program. Copies of the guidance documents referenced above are enclosed with this letter.

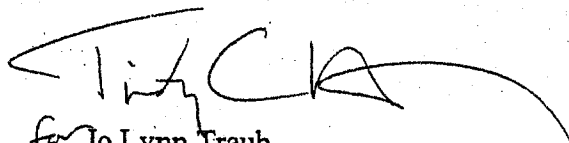
In addition to the recommendations contained in the Report, we believe that USEPA and WDNR need to develop a consistent, coordinated compliance strategy to address the SSOs in the MMSD service area. We believe the draft proposal that USEPA, Region 5, provided to WDNR in October 2000, lays the groundwork for such an effort. We look forward to continuing to develop that strategy in collaboration with the WDNR to address the SSO problem in the Milwaukee area.

Combined Sewer Overflow Controls

Under **Long-term Projects and Activities**, the Report indicates that the 2020 facilities plan would be based, in part, on meeting an average of no more than two combined sewer overflows (CSOs) per year. As discussed in the footnote on page 25 of the Report and further elaborated on pages 38-39, the ultimate level of CSO control will be determined based on an evaluation of the water quality impacts of the CSOs. This level of control could be different than two overflows per year. It is also important that MMSD consider a full range of control options, including options such as primary treatment with disinfection, and floatables control for flows that do not receive full treatment at the wastewater treatment plant.

We hope that these comments are helpful, and we appreciate the positive working relationship we have established with regard to this issue. If you have any questions about USEPA's comments, please contact James Filippini, of my staff, at (312) 886-6743.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jo Lynn Traub", with a long horizontal flourish extending to the right.

for Jo Lynn Traub
Director, Water Division

Enclosures

cc: Duane Schuettpelz, WDNR, WT/2 ✓
Jay Hochmuth, WDNR, WT/2
Gloria McCutcheon, WDNR, SE Region
James Fratrack, WDNR, SE Region
Rick Prosis, WDNR, WT/2

March 7, 2001

The Honorable Bill Frist
United States Senate
Washington, D.C. 20510

Dear Senator Frist:

Thank you for your December 18, 2000, letter requesting that the U.S. Environmental Protection Agency (EPA) provide an update on the status of our efforts to clarify National Pollutant Discharge Elimination System (NPDES) treatment requirements for discharges from publicly owned treatment works (POTWs) where peak wet weather flow is routed around biological treatment units and then blended with the effluent from the biological units prior to discharge. The Agency remains committed to providing guidance on this issue as expeditiously as possible. I would like to share our current thinking. We believe that NPDES authorities have considerable flexibility through the permitting process to account for different peak flow scenarios that are consistent with generally accepted good engineering practices and criteria for long-term design. We believe that peak wet weather discharges from POTWs that are comprised of effluent routed around biological treatment units together with the effluent from the biological units prior to discharge could be approved in an NPDES permit where all of the following principles are followed:

1. The final discharge meets effluent limitations based on the secondary treatment regulation (40 CFR Part 133) and/or any more stringent limitations necessary to meet water quality standards.
2. The NPDES permit application for the POTW provides notice of, and the permit specifically recognizes, the treatment scheme that will be used for peak flow management. The treatment scheme, including designed capacity of various units, should be consistent with generally accepted practices and design criteria, and designed to meet under the specified treatment scenario effluent limitations based on the secondary treatment regulation and/or any more stringent limitations necessary to meet water quality standards.

3. Alternative flow routing scenarios are only used when flows exceed the capacity of storage/equalization units and biological treatment units based on generally accepted good engineering practices and criteria as defined in the permit.
4. During peak flow conditions, the treatment system chosen by the permittee is operated as it is designed to be operated and in accordance with the conditions set forth in the permit.
5. The permit contains appropriate requirements for the collection system, including at a minimum, that the permittee properly design, operate, and maintain its collection system and, for permittees that own or operate combined sewers, conditions that conform to the 1994 Combined Sewer Overflow (CSO) Control Policy.

Peak wet weather flows that are routed around the biological treatment units of the POTW that do not meet the criteria listed above are considered prohibited bypasses under the bypass regulation at 40 CFR 122.41(m) unless they otherwise meet the criteria provided in the bypass provision. Under the NPDES regulations, all NPDES permits are required to contain a prohibition on bypasses consistent with 40 CFR 122.41(m).

Additional considerations for permit writers addressing POTWs that use alternative peak flow treatment schemes include:

- A. NPDES permits should require compliance monitoring appropriate for the peak flow treatment scheme recognized in the permit for the POTW.
- B. NPDES permits should ensure that permittees develop good information to foster informed management of the collection system and treatment facility during peak wet weather flow conditions, and, where appropriate, assess potential water quality impacts and performance of treatment technologies under peak flow conditions.
- C. To the extent practicable, NPDES permit requirements for discharges of peak wet weather flows at the POTW should be developed in a manner that encourages comprehensive consideration of both the intended performance of treatment plants in the system and the collection system itself.
- D. NPDES permit conditions are clear and enforceable.

We do not intend the principles for approving routing schemes in a permit described above to address NPDES permit requirements for discharges from facilities other than POTWs, portions of flows that do not receive at least primary treatment, or the treatment of flows resulting from dry weather conditions.

As the Agency continues to develop guidance, we want to ensure that States, municipalities, environmental advocacy groups, and other interested parties have an adequate opportunity to provide data, feedback and input. To assist interested parties in providing input, EPA is developing a draft principles statement reflecting the above considerations, which will be made available for review and comment. We will provide you with a copy of the draft principles statement when it becomes available.

Your letter also requests that EPA provide answers to three questions.

- 1) **Has EPA ever provided public notice that specifically states that blending is prohibited under the bypass or secondary treatment regulations?**

While EPA has not provided specific notice that blending of waste streams is prohibited under the bypass regulation, the Agency has provided specific notice regarding the bypass provision at 40 CFR 122.41(m). The bypass provision defines bypass to mean the intentional diversion of waste streams from any portion of a treatment facility. The provision requires the permittee to operate its entire treatment facility at all times (40 FR 37998, 38036). The regulation prohibits bypass except for a bypass which does not cause effluent limitations to be exceeded, but only if the bypass is for essential maintenance to assure efficient operation. The regulation further provides that the Director of the NPDES program may take enforcement action against a permittee for bypass, unless:

- (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- (B) There were no feasible alternatives to the bypass; and
- (C) The permittee submitted the required notices.

The Director of the NPDES program may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above. EPA complied with formal rulemaking procedures when it promulgated this regulatory provision. The bypass provision is a minimum requirement for all NPDES permits. Given the complex array of situations that can arise throughout the wastewater industry regulated by the NPDES program, EPA has not requested comment on the many specific situations that may arise under the provision, including the blending of excess (primary treated) wet weather flows with flows treated using biological processes prior to discharge.

On the specific question of diversion of wet weather flows in excess of secondary treatment capacity, the Agency did invite comment on the issue in 1992 in the context of a draft CSO Control Policy. The final 1994 CSO Control Policy does explain that, under limited circumstances, such diversions could be "approved." However, the 1994 CSO Control Policy does not specifically address blending of diverted flows.

- 2) **Has EPA formally rescinded its 1992 regulatory interpretation that blending, which achieves final permit limits, is not a bypass?**

EPA has not "formally rescinded" any interpretation because the Agency has not yet made a formal interpretation to sustain or rescind. In 1992, EPA proposed for public comment a regulatory interpretation that the term "bypass" not include situations where flows or portions of flows that are diverted from portions of the treatment system are recombined with non-diverted flows prior to discharge if the discharge meets all applicable effluent limits for the treatment plant. When EPA took final action on the CSO Control Policy in 1994, the final CSO Control Policy did not contain the specific language related to recombination, either in the discussion of maximizing treatment at the POTW treatment plant or elsewhere in the Policy.

- 3) **Has EPA ever completed any regulatory analysis regarding the cost impact and environmental benefits of a blending prohibition?**

EPA believes that NPDES permitting authorities have considerable flexibility through the NPDES permitting process to account for different peak flow scenarios that are consistent with generally accepted good engineering practices and criteria for long-term design. As such, NPDES permitting can account for blending. As described above, blending may be approved. EPA did not conduct a formal analysis of the national costs or environmental impacts of alternative regulatory frameworks for addressing peak wet weather flows at POTWs when conducting the regulatory analyses that were applicable at the time when EPA promulgated the bypass regulation.

The Office of Wastewater Management at EPA is currently collecting information about common engineering design practices and operational procedures that are employed to manage peak wet weather flows at POTWs, including representative costs of various treatment schemes (including blending). EPA intends to collect information on the treatment efficiency and potential water quality concerns associated with different practices and procedures, including pathogen control, toxicity reduction and nitrification.

~ Thank you for your interest and concern. If you have any questions, please do not hesitate to contact me.

Sincerely,

/ s / March 7, 2001

Diane C. Regas
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 21 1995

MEMORANDUM

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SUBJECT: Revision of NPDES Significant Noncompliance (SNC)
Criteria to Address Violations of Non-Monthly Average
Limits

FROM: Steven A. Herman *SNA*
Assistant Administrator

TO: Water Management Division Directors, Regions I-X
Regional Counsels

This memorandum transmits to you the NPDES program's new SNC definition. This revision of the SNC criteria was needed because the current definition results in many significant violators escaping detection as SNC and, therefore, avoiding routine enforcement consideration. The expeditious development of these criteria was due in large part to the outstanding support from members of the SNC Workgroup from various States and all ten Regions.

The option for the change to the SNC criteria that I have selected basically entails the application of the current SNC criteria for Monthly Averages to Non-Monthly Averages as recommended by the national SNC Workgroup. In making my decision, I carefully considered information provided by you and your staff, the SNC Workgroup, and the Water Enforcement Division (WED) here at Headquarters.

In brief, I selected the Workgroup option for the following reasons. First, it is fully consistent with the President's Reinventing Environmental Regulation guidance and will result in better targeting of limited enforcement resources to violations posing the greatest risks to health and the environment. Second, no new reports are required. The data to calculate the SNC based on the new criteria is already provided in the NPDES national data base known as the Permit Compliance System (PCS).

Third, the violations of the Non-Monthly Average SNC facilities do pose a significant threat to the environment/public health. Toxics and other risk-based water quality based limits are being violated in a large majority of the new SNC cases. Among the new SNC are non-toxic pollutants, such as nutrients and oxygen demanding parameters, which have been documented by EPA as being among the top five causes of water quality impairment.

Also, close to three quarters of the non-toxic SNC violators, which will be captured by the new SNC criteria, are repeat offenders and therefore are among the worst violators.

Attachment I provides the official new SNC definition. Attachment II-A provides details on the Regulatory Reinvention analysis and Attachment II-B discusses the SNC definition options.

IMPLEMENTATION

Although I am officially selecting this new SNC definition today, I am delaying formal implementation for one year. This delay is, in part, a response to the Regions' request for time, prior to officially reporting the new SNC, to reduce the initial increase in SNC from the new definition. In addition, this delay will allow the time necessary to make changes in PCS to automate the calculation and reporting of the new SNC.

I expect the Regions (and States), over approximately the next two years, will take formal enforcement actions to reduce or eliminate this increase in SNC. Until the changes are made in PCS, I request that the Regions and States use the Non-Monthly Average SNC software, which will soon be made available to you by OECA, to temporarily identify Non-Monthly Average SNC facilities. Where appropriate, I request that Timely and Appropriate ("T and A") enforcement action be considered while PCS changes are being made.

Also during this interim period, it would be useful to report SNC counts for Non-Monthly Averages along with other quarterly enforcement reports. Although this interim reporting is optional, the data would help WED in developing its recommendation on a revision to the standard acceptable level of SNC (plus "T and A" and the Exceptions List) which Headquarters uses in routine Regional performance reviews. In revising this bench mark level of acceptable SNC, the goal will be to draw a reasonable balance between resources and the new SNC rate.

Once the changes in PCS are completed, all categories of SNC will be integrated into the routine quarterly SNC count and will appear on the Quarterly Noncompliance Report (QNCR). Also, I wish to remind the Regions (and States) that they may remove SNC indicators in PCS for those occasional violations that technically meet the SNC criteria but, in reality, do not constitute a significant infraction. Such deletions must be documented in a facility's file.

As appropriate, these and other implementation issues will be discussed with the Regions in the near future. If you have any questions regarding the SNC criteria or their implementation,

please contact Brian Maas. Acting Director, Water Enforcement Division at (202) 564-2240 or have your staff call Richard Lawrence at (202) 564-3511. Again, I wish to thank you and all the workgroup members for your outstanding efforts and perseverance, and look forward to working with you on implementation.

Attachments

cc: Water Enforcement Branch Chiefs

Michael Cook

OECA Office Directors

Fred Stiehl

Workgroup Members

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Significant Noncompliance (SNC) Criteria for
National Pollutant Discharge Elimination System Violations

1. Effluent Violations of Monthly Average Limits

a. TRC Violations

A 40% exceedance of specific pollutant limits listed in Exhibit A or a 20% exceedance of a specific pollutant limit from Exhibit B at a given discharge point for any two or more months during the two consecutive quarter review period is SNC.

b. Chronic Violations

Violation of any monthly effluent limit at a given pipe by any amount for any four or more months during the two consecutive quarter review period is SNC.

2. Effluent Violations of Non-Monthly Average Limits*

TRC and chronic SNC criteria are the same as for monthly average violations as described in section 1. a. and b. above. However, the following caveat also applies:

When a parameter has both a monthly average and a non-monthly average limit, a facility would only be considered in SNC for the non-monthly limits if the monthly average is also violated to some degree (but less than SNC).

3. Other Effluent Violations

Any effluent violation that causes or has the potential to cause a water quality or human health problem is SNC.

4. Non-Effluent Violations

Any unauthorized bypass, unpermitted discharge, or pass through of pollutants which causes or has the potential to cause a water quality problem (e.g., fish kills, oil sheens) or health problems (e.g., beach closings, fishing bans, or other restrictions of beneficial uses) is SNC. In the case of POTWs implementing Approved Pretreatment Programs, failure to implement or enforce those programs is SNC.

*NOTE: Non-monthly average SNC applies to all maximum and all average (other than monthly average) statistical base codes.

5. Permit Schedule Violations

Any failure to start construction, end construction, or attain final compliance within 90 days of the scheduled date is SNC. Also, all pretreatment schedule milestones missed by 90 days or more are SNC.

6. Permit Reporting Violations

Discharge Monitoring Reports, POTW Pretreatment Performance Reports, and the Compliance Schedule Final Report of Progress (i.e., whether final compliance has been attained) that are not submitted at all or are submitted 30 or more days late are SNC.

7. Enforcement Orders

a. Judicial Order

Any violation of a Judicial Order is SNC.

b. Administrative Order (AO)

Any violation of an effluent limit (or other water quality/health impact) established in an AO is SNC. However, when an AO limit is as stringent as an applicable permit limit, the facility is SNC only if the permit effluent SNC criteria, set out in number 1-3 above, are met.

Any unauthorized bypass, unpermitted discharge or pass-through of pollutants which cause or has the potential to cause a water quality problem or human health problem is SNC.

Any schedule or reporting violations listed above in sections 5 and 6 respectively are SNC.

Any violations of narrative requirements or any other violation of concern to the Director is SNC.

Exhibit A
SNC Conventional Pollutants
(40% exceedance of limit)

Group I Pollutants-TRC=1.4

Oxygen Demand
Biochemical Oxygen Demand
Chemical Oxygen Demand
Total Oxygen Demands
Total Organic Carbon
Other

Solids
Total Suspended Solids
(Residues)
Total Dissolved Solids
(Residues)
Other

Nutrients
Inorganic Phosphorus Compounds
Inorganic Nitrogen Compounds
Other

Detergents and Oils
MBAS
NTA
Oil and Grease
Other detergents or algicides

Minerals
Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Metals
Aluminum
Cobalt
Iron
Vanadium

Exhibit B
SNC Toxic Pollutants
(20% exceedance of limit)

Group II Pollutants-TRC=1.2

Metals (all forms)
Other metals not specifically listed under Group I

Inorganic
Cyanide
Total Residual Chlorine

Organics
All organics are Group II except those specifically listed
under Group I.3

Regulatory Reinvention Analysis
(Steve Herman)

BACKGROUND

In August 1994, the Water Enforcement Division (WED) briefed me on the problem of the large number of NPDES facilities with serious violations that were not being identified as being in Significant Noncompliance (SNC) and, therefore, were not routinely considered for enforcement. Based on the most recent analysis, up to 400 facilities that should be SNC due to the seriousness of the violation are not identified as such. They escape detection as SNC because their permits are written without Monthly Average limits which are essential to trigger SNC. (See 40 CFR 122.45(d) which requires Monthly Average limits for all continuous discharges unless impracticable.) The SNC Workgroup has proposed that the SNC definition be expanded to include Non-Monthly Average violations to ensure that all serious violators are identified as SNC.

The proposal to change SNC has come at a time when procedures of regulatory agencies are under increased scrutiny. We have been given guidance on how to pursue the Administration's initiative on Reinventing Environmental Regulation. Therefore, in changing our SNC definition it is necessary to put special emphasis on: (1) not increasing the reporting burden, (2) ensuring that problems we address involve serious impacts on the environment/public health and (3) targeting our enforcement resources to the worst violators. A balance between these factors and our basic commitment to a vigorous enforcement program must be achieved in making a decision on major changes to our SNC criteria.

NO NEW REPORTING

The Reinventing Environmental Regulation guidance stipulates that the reporting/paperwork burden should decrease by 25%. Therefore, new reporting requirements are not appropriate. The proposed SNC revision requires no new reports.

The data required for the Non-Monthly Average SNC calculation is already available in the NPDES national data base, referred to as PCS. The first of two additional costs for the new SNC involves a one time reprogramming of PCS, which is covered in the current budget for the Office of Enforcement and Compliance Assurance (OECA). The second cost is the limited, additional computer time to routinely calculate SNC. Accordingly, there are no significant costs to EPA in identifying

the new SNC facilities. As for the States, California is the only one with a significant number of new SNC that would have to manually add new facilities to the public report on violations, known as the Quarterly Noncompliance Report (QNCR). This regulatory report includes SNC plus other NPDES violations.

IMPACT ON ENVIRONMENT/PUBLIC HEALTH

A change to the SNC definition is necessary to avoid negative impacts to the environment/public health. Violations of toxic limits or any water quality based limit are particularly important in this matter.

Region V, which has been a major proponent of the change to SNC, has emphasized that the lack of application of SNC to Non-Monthly Averages means that many violations of toxic limits are not routinely identified for enforcement consideration. This is because toxic limits are frequently controlled with Non-Monthly Average limits which, as indicated above, do not automatically trigger SNC. Out of concern for toxic impacts on the environment/public health, Region V and all the Great Lakes States have applied SNC to Non-Monthly Averages for the Great Lakes Enforcement Strategy for the past two years.

Moreover, violations of water quality based limits make up a large majority (71%) of the violated limits for Non-Monthly Average SNC under the new definition. Water quality based limits are a product of risk based analysis in which a comparison is made of the deleterious effect on impacted organisms at different pollutant concentration levels. The use of risk based analysis is recommended in the guidance for Reinventing Environmental Regulation.

TARGETING THE WORST VIOLATORS (toxic and conventional)

Another priority in the Reinventing Environmental Regulation guidance is targeting the worst violators for enforcement consideration. In addition to the assessment of environmental/public health impacts discussed above, consideration must be given to the degree of violation exceedance and duration. In order to be eligible for SNC status, a violation must exceed the limit by 20% for toxics or 40% for other limits. Furthermore, to ensure the violation is not a "one time event" the limit exceedance must occur twice in six months (or, for marginal exceedances, four times in six months). Accordingly, only the most serious threats to the environment/public health are targeted for enforcement.

Toxic pollution may be more readily seen as an enforcement priority than pollution associated with conventional pollutants. However, the March 1994 Clean Water Act Section 305 (b) Report identifies among its five leading causes of water quality impairment two major conventional pollutants: nutrients and oxygen demanding parameters. Furthermore, ammonia, chlorine, and

oxygen demanding parameters were identified as leading causes of fish kills.

Also, it should be noted that over 70% of the facilities which were identified as SNC for Non-Monthly Averages for "other than toxic violations" were repeat offenders, i.e., SNC two out of three quarters. More than half of these conventional parameter polluters were SNC for all three quarters in the study period. This further underlines the fact that the non-toxic violators under the expanded SNC definition have patterns of noncompliance. These patterns, along with risks, should be used in targeting our resources according to the guidance on Reinventing Environmental Regulation.

OPTIONS/ANALYSIS/SELECTIONOption A - SNC Workgroup

Background:

A summary of each option considered by the Workgroup is provided in Exhibit I-A. Each option addressed the problem of how to craft the criteria so it would capture truly significant violations without including marginal violations. This is much more of a problem for Non-Monthly Averages than Monthly Averages. Whereas, Monthly Average violations clearly reflect a significant, sustained problem, and thereby are a superior indicator of a serious infraction, violations of Non-Monthly Averages such as Daily Maximum limits are for a much shorter time period and involve more frequent sampling. Therefore, with the latter violations there is more opportunity to flag violations that are a marginal priority.

The Workgroup's options were variations on existing SNC Monthly Average criteria which involve violation exceedances of at least 40% for conventional and nonconventional pollutants (e.g., BOD, TSS, nitrogen, etc.) and 20% for toxic pollutants. (See Exhibits to Attachment II.) These exceedance levels are referred to as Technical Review Criteria (TRC). To trigger SNC, there need to be two TRC violations or four violations of any amount (chronic) within six months.¹ The Workgroup's first two options featured an increase in the TRC and the violation time period respectively. These options were aimed at eliminating marginal violators. However, in each case, the option's impact on total SNC was so minor that the options were dropped.

Description of Option A:

The criteria for the Workgroup's third option is identical to the existing SNC Monthly Average criteria described above (two TRC or four chronics in six months) with the exception of a caveat which was added to eliminate marginal violations. The caveat is as follows: when a facility has both Monthly Average and Non-Monthly Average permit limits for the same parameter, Non-Monthly Average violations will be considered SNC only if the facility has some Monthly Average violation as well.

¹ DMR Reports only require highest measurement observed during month to be reported. That is, EPA will only see six data points for each limits in a six month period.

This third option is recommended by the Workgroup as it not only eliminates marginal Non-Monthly Average violations, but is consistent with existing TRC and chronic SNC criteria and thereby minimizes the changes in the automated process for calculating SNC. This option is also similar to the approach to SNC used in the Great Lakes Enforcement Strategy.

Option B - Water Management Division Directors (WMDD)

The WMDD endorsed the SNC Workgroup's recommendation but requested that the new SNC criteria only apply to certain parameters: metals, organics and pesticides. Once a mechanism to identify Non-Monthly Average SNC is in place, a one year pilot period will follow during which the WMDD agreed to take action against these new SNC facilities. However, the number of Non-Monthly Average SNC facilities would not be included in the official quarterly SNC reports during this transition period. Based on the experience gained during this pilot period, the new criteria would be reevaluated.

OPTION COMPARISON AND FINAL SELECTION (by Steve Herman)

In making a decision on the criteria, I recognized that a major increase in SNC due to the expansion of the criteria was inevitable. The expected increase in SNC is related to a category of significant violators that have existed for some time but not included in our SNC reports and therefore, not automatically considered for enforcement. Without this change in the SNC criteria, EPA management would not have an accurate accounting of the significant violators to be considered for enforcement nor would our SNC reports for the public and Congress reflect the true scope of noncompliance. I believe Option A best addresses these concerns as it applies SNC to the major pollutants and can be implemented with a schedule that reflects the need to act expeditiously to resolve this issue.

Option B has the benefit of generating a much smaller increase in SNC by excluding key parameters from the criteria. However, among the excluded parameters, are ones documented by EPA as major causes of water quality impairment and fish kills. (Please see CWA Section 305(b) Report, March 1994.) Another feature of Option B is an extended implementation schedule which allows for subsequent reconsideration of the proposed SNC criteria. This would result in a delay of a minimum of two years for the new, comprehensive SNC reports and therefore, is not consistent with my goal of acting expeditiously on this ongoing problem.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 7 1996

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Addition of Chapter X to Enforcement Management System (EMS): Setting Priorities for Addressing Discharges from Separate Sanitary Sewers

FROM: Steven A. Hernandez
Assistant Administrator

TO: Water Management Division Directors, Regions I-X
NPDES State Enforcement Directors
Regional Counsels, Regions I-X

I am pleased to transmit to you a new chapter in final form for the Enforcement Management System (EMS) Guide. This new chapter provides a method of setting priorities for addressing discharges of untreated sewage from separate sanitary sewer collection systems prior to the headworks of a sewage treatment plant. Included with this chapter is an Enforcement Response Guide, specifically tailored to these types of discharges.

I want to express my appreciation to those Regional, Headquarters, State personnel, and the members of the Federal Advisory Sub-Committee for Sanitary Sewer Overflows (SSO) who helped develop this document. The Advisory Sub-Committee reviewed it at two public meetings in August and October, 1995. The cooperation and hard work of all interested parties has produced this final document which I believe will help protect public health and the environment from these serious sources of water pollution.

This guidance supplements the current EMS by establishing a series of guiding principles and priorities for use by EPA Regions and NPDES States in responding to separate sanitary sewer discharge violations. The guidance allows sufficient flexibility to alter these priorities based on the degree of public health or environmental risk presented by specific discharge conditions. Implementation of this guidance by EPA and the States will promote national consistency in addressing discharges from separate sanitary sewers. Implementation will also ensure that

enforcement resources are used in ways that maximize public health and environmental benefits.

The Regions should ensure that all approved States are aware of this additional EMS guidance, and the Regions and NPDES States should begin the process of modifying their written EMS documents to include it. Both Regions and States should have these documents revised and implemented no later than November 15, 1996.

If you have questions about this document, please feel free to contact Brian J. Maas, Director, Water Enforcement Division (202/564-2240), or Kevin Bell of his staff (202/564-4027).

cc: Mike Cook, OWM

Attachments

THE ENFORCEMENT MANAGEMENT SYSTEM
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
(CLEAN WATER ACT)

CHAPTER X: Setting Priorities for Addressing Discharges
from Separate Sanitary Sewers

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF REGULATORY ENFORCEMENT

1996

ENFORCEMENT MANAGEMENT SYSTEM - CHAPTER A

Setting Priorities for Addressing Discharges from Separate Sanitary Sewers

Discharges of raw or diluted sewage from separate sanitary sewers before treatment can cause significant public health and environmental problems. The exposure of the public to these discharges and the potential health and environmental impacts are the primary reasons EPA is developing this additional guidance on these discharges. This document provides a method of setting priorities for regulatory response, and serves as a supplement to the Enforcement Management System guidance (EMS, revised February 27, 1986). As such, this document addresses only those discharges which are in violation of the Clean Water Act. As a general rule, the discharges covered by this guidance constitute a subset of all discharges from separate sanitary sewer systems.

Legal Status

In the context of this document, a "discharge from a separate sanitary sewer system" (or "discharge") is defined as any wastewater (including that combined with rainfall induced infiltration/inflow) which is discharged from a separate sanitary sewer that reaches waters of the United States prior to treatment at a wastewater treatment plant. Some permits have specific requirements for these discharges, others have specific prohibitions under most circumstances, and still other permits are silent on the status of these discharges.

The legal status of any of these discharges is specifically related to the permit language and the circumstances under which the discharge occurs. Many permits authorize these discharges when there are no feasible alternatives, such as when there are circumstances beyond the control of the municipality (similar to the concepts in the bypass regulation at 40 CFR Part 122.41 (m)). Other permits allow these discharges when specific requirements are met, such as effluent limitations and monitoring/reporting.

Most permits require that any non-compliance including overflows be reported at the end of each month with the discharge monitoring report (DMR) submittal. As a minimum, permits generally require that overflow summaries include the date, time, duration, location, estimated volume, cause, as well as any observed environmental impacts, and what actions were taken or are being taken to address the overflow. Most permits also require that any non-compliance including overflows which may endanger health or the environment be reported within 24 hours, and in writing within five days. Examples of overflows which may endanger health or the environment include major line breaks, overflow events which result in fish kills or other significant harm, and overflow events which occur in environmentally sensitive areas.

For a person to be in violation of the Clean Water Act:

- 1) a person must own, operate, or have substantial control over the conveyance from which the discharge of pollutants occurs,
- 2) the discharge must be prohibited by a permit, be a violation of the permit language, or not be authorized by a permit, and 3) the discharge must reach waters of the United States. In addition, discharges that do not reach waters of the United States may nevertheless be in violation of Clean Water Act permit requirements, such as those requiring proper operation and maintenance (O&M), or may be in violation of state law.

Statement of Principles

The following six principles should be considered as EPA Regions and States set priorities for addressing violating discharges from separate sanitary sewers:

1. All discharges (wet weather or dry weather) which cause or contribute significantly to water quality or public health problems (such as a discharge to a public drinking water supply) should be addressed as soon as physically and financially possible. Other discharges may, if appropriate, be addressed in the context of watershed/basin plans (in conjunction with state or federal NPDES authorities).
2. Discharges which occur in high public use or public access areas and thus expose the public to discharges of raw sewage (i.e., discharges which occur in residential or business areas, near or within parks or recreation areas, etc.) should be addressed as soon as physically and financially possible.
3. Dry weather discharges should be addressed as soon as physically and financially possible.
4. Discharges due to inadequate operation and routine maintenance should be addressed as soon as possible. (Physical and financial considerations should be taken into account only in cases where overflow remedies are capital intensive.)
5. Discharges which could be addressed through a comprehensive preventive maintenance program or with minor capital investment should be addressed as soon as physically and financially possible.
6. With respect to principles 1 through 5 above, schedules of compliance which require significant capital investments should take into account the financial capabilities of the specific municipality, as well as any procedures required by state and local law for publicly owned facilities in planning, design, bid, award, and construction. (See later sections on Schedules).

Causes of Sanitary Sewer Discharges

Discharges from separate sanitary sewers can be caused by a variety of factors including, but not limited to:

1. Inadequate O&M of the collection system. For example, failure to routinely clean out pipes, failure to properly seal or maintain manholes, failure to have regular maintenance of deteriorating sewer lines, failure to remedy poor construction, failure to design and implement a long term replacement or rehabilitation program for an aging system, failure to deal expeditiously with line blockages, or failure to maintain pump stations (including back-up power).
2. Inadequate capacity of the sewer system so that systems which experience increases in flow during storm events are unable to convey the sewage to the wastewater treatment plant. For example, allowing new development without modeling to determine the impact on downstream pipe capacity, insufficient allowance for extraneous flows in initial pipe design (e.g. unapproved connection of area drains, roof leaders, foundation drains), or overly optimistic Infiltration/Inflow reduction calculations.
3. Insufficient capacity at the wastewater treatment plant so that discharges from the collection system must occur on a regular basis to limit flows to the treatment plant. For example, basic plant designs which do not allow sufficient design capacity for storm flows.
4. Vandalism and/or facility or pipeline failures which occur independent of adequate O&M practices.

Applicable Guidance

For many years, EPA and the States have been working with municipalities to prevent discharges from separate sanitary sewer systems. The preferred method has been to use the general policy on responding to all violations of the Clean Water Act which is contained in the EMS guidance. Factors which are considered are the frequency, magnitude, and duration of the violations, the environmental/public health impacts, and the culpability of the violator. This guidance sets up a series of guiding principles for responding to separate sanitary sewer discharge violations, and it supplements the current EMS.

Every EPA Region and State uses some form of this general enforcement response guidance as appropriate to the individual state processes and authorities. Under the guidance, various EPA Regions and States have taken a large number of formal enforcement actions over the past several years to address sanitary sewer discharge problems across the country. Responses have included administrative orders and/or civil judicial actions

against larger municipalities to address sanitary sewer discharge problems, resulting in substantial injunctive relief in some cases.

As a result of EPA Region and State enforcement efforts, a number of municipalities have invested substantial resources in diagnostic evaluations and designing, staffing, and implementing O&M plans. Other municipalities have undertaken major rehabilitation efforts and/or new construction to prevent sanitary sewer discharges.

Priorities for Response

There are approximately 18,500 municipal separate sanitary sewage collection systems (serving a population of 135 million), all of which can, under certain circumstances, experience discharges. Given this fact, the Agency has developed a list of priorities in dealing with the broad spectrum of separate sanitary sewer discharges to ensure that the finite enforcement resources of EPA and the States are used in ways that result in maximum environmental and public health benefit. However, these priorities should be altered in a specific situation by the degree of health or environmental risks presented by the condition(s).

In the absence of site-specific information, all separate sanitary sewer discharges should be considered high risk because such discharges of raw sewage may present a serious public health and/or environmental threat. Accordingly, first priority should be given within categories (such as dry weather discharges and wet weather discharges) to those discharges which can be most quickly addressed. The priority scheme listed below takes this into account by first ensuring that municipalities are taking all necessary steps to properly operate and maintain their sewerage systems. Corrective action for basic O&M is typically accomplished in a short time, and can yield significant public health and environmental results.

Risk again becomes a determinant factor when conditions warrant long term corrective action. The goal here should be to ensure that capital intensive, lengthy compliance projects are prioritized to derive maximum health and environmental gains.

The priorities for correcting separate sanitary sewer discharges are typically as follows:

- 1) Dry weather, O&M related: examples include lift stations or pumps that are not coordinated, a treatment plant that is not adjusted according to the influent flow, poor communication between field crews and management, infiltration/inflow, and/or pretreatment problems.

2) Dry weather, preventive maintenance related: examples include pumps that fail due to poor maintenance, improperly calibrated flow meters and remote monitoring equipment, insufficient maintenance staff, deteriorated pipes, and/or sewers that are not cleaned regularly.

3) Dry weather, capacity related: examples include an insufficient number or undersized pumps or lift stations, undersized pipes, and/or insufficient plant capacity.

4) Wet weather, O&M related: examples include excessive inflow and/or infiltration (such as from improperly sealed manhole covers), inadequate pretreatment program (i.e. excessive industrial connections without regard to line capacity), uncoordinated pump operations, treatment plant operation that is not adjusted according to the influent flow, poor coordination between field crews and management, illegal connections, and/or no coordination between weather forecast authorities and sewer system management.

5) Wet weather, preventive maintenance related: examples include poor pump maintenance leading to failure, improperly calibrated flow meters and remote monitoring equipment, insufficient maintenance staff, and/or sewers that are not cleaned regularly.

6) Wet weather, O&M minor capital improvement related: examples include the upgrading of monitoring equipment, pumps, or computer programs, and/or repair or replacement of broken manholes or collapsed pipes.

7) Wet weather capacity, quick solution related: examples include a known collection system segment that is a "bottleneck", pumps beyond repair in need of replacement, and/or need for additional crews or technical staff.

8) Wet weather, capacity, health impact related requiring long term corrective action: examples include frequent discharges to public recreational areas, shellfish beds, and/or poor pretreatment where the total flow is large.

9) Wet weather, capacity, sensitive area related requiring long term corrective action: examples include discharges to ecologically and environmentally sensitive areas, as defined by State or Federal government.

Selecting A Response

The appropriate regulatory response and permittee response for separate sanitary sewer discharges will depend on the specifics of each case. The regulatory response can be informal, formal, or some combination thereof. Typical regulatory

responses include a phone call, Letter of Violation (LOV), Section 308 Information Request, Administrative Order (AO), Administrative Penalty Order (APO), and/or judicial action. The permittee response can range from providing any required information to low cost, non-capital or low capital improvements to more capital intensive discharge control plans.

The attached chart lists some categories of separate sanitary sewer noncompliance along with the range of response for each instance. The chart is intended as a guide. The responses listed on the chart are not to be considered mandatory responses in any given situation. EPA and the States should use the full range of regulatory response options (informal, formal, or some combination thereof) to ensure that the appropriate response or remedy is undertaken by the permittee or municipality. All regulatory responses should be in accordance with the concept of the EMS regarding orderly escalation of enforcement action.

Developing Compliance Schedules

A compliance schedule should allow adequate time for all phases of a sanitary sewer discharge control program, including development of an O&M plan, diagnostic evaluation of the collector system, construction, and enhanced O&M. Municipalities should be given a reasonable length of time to develop schedules so they can realistically assess their compliance needs, examine their financing alternatives, and work out reasonable schedules for achieving compliance. Nevertheless, timelines for schedules should be as short as physically and financially possible.

Short Term Schedules

In general, short term schedules would be appropriate for sanitary sewer discharges involving O&M problems, or where only minor capital expenses are needed to correct the problem. The schedule should have interim dates and a final compliance date incorporated in the administrative order or enforcement mechanism.

Comprehensive Discharge Control Schedules

Comprehensive discharge control schedules should be used where specific measures must be taken to correct the discharges, and the measures are complicated, costly, or require a significant period of time to implement. If appropriate, these schedules should include the use of temporary measures to address high impact problems, especially where a long term project is required to correct the sanitary sewer discharge violation.

When working with municipalities to develop comprehensive schedules, EPA Regions and States should be sensitive to their

special problems and needs, including consideration of a municipality's financial picture. Factors that should be considered are the municipality's current bond rating, the amount of outstanding indebtedness, population and income information, grant eligibility and past grant experience, the presence or absence of user charges, and whether increased user charges would be an effective fund-raising mechanism, and a comparison of user charges with other municipalities of similar size and population.

Physical capability should be considered when schedules are developed. Schedules should include interim milestones and intermediate relief based on sound construction techniques and scheduling such as critical path method. Compliance schedules should be based on current sewer system physical inspection data adequate to design sanitary sewer discharge control facilities. Schedules should not normally require extraordinary measures such as overtime, short bidding times, or other accelerated building techniques. Where possible, schedule development should be completed according to normal municipal government contracting requirements.

Financial capability should also be considered in schedule development, including fiscally sound municipal financing techniques such as issuing revenue bonds, staging bond issuance, sequencing project starts, sensitivity to rate increase percentages over time.

Note: The intent of this guidance is to aid the Regions and States in setting priorities for enforcement actions based on limited resources and the need to provide a consistent level of response to violations. This does not represent final Agency action, but is intended solely as guidance. This guidance is not intended for use in pleading, or at hearing or trial. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties. This guidance supplements the Agency's Enforcement Management System Guide (revised February 27, 1986).

ENFORCEMENT RESPONSE GUIDE **DISCHARGES FROM SEPARATE SANITARY SEWERS**

NONCOMPLIANCE

CIRCUMSTANCES

RANGE OF RESPONSE

Discharge without a permit or in violation of general prohibition

Isolated & infrequent, dry weather O&M related

Phone call, LOV, 308 request

Discharge without a permit or in violation of general prohibition

Isolated & infrequent, dry weather capacity related

308 request, AO, APO, Judicial action

Discharge without a permit or in violation of general prohibition

Isolated & infrequent, wet weather O&M related

Phone call, LOV, 308 request

Discharge without a permit or in violation of general prohibition

Isolated & infrequent, wet weather, quick and easy solution

LOV, 308 request

Discharge without a permit or in violation of general prohibition

Isolated & infrequent, wet weather capacity related, health and/or sensitive areas

LOV, 308 request, AO, APO

Discharge without a permit or in violation of general prohibition

Isolated & infrequent, wet weather capacity related, non-health, non-sensitive areas

Phone call, LOV, 308 request

Discharge without a permit or in violation of general prohibition

Cause unknown

Phone call, LOV, 308 request

Discharge without a permit or in violation of general prohibition

Permittee does not respond to letters, does not follow through on verbal or written agreement

AO, APO, judicial action

Discharge without a permit or in violation of general prohibition

Frequent, does not significantly affect water quality, no potential public health impact

LOV, 308 request, AO, APO

Discharge without a permit or in violation of general prohibition

Frequent, cause or contribute significantly to WQ problems, or occur in high public use and public access areas, or otherwise affect public health

AO, APO, judicial action

ENFORCEMENT RESPONSE GUIDE
DISCHARGES FROM SEPARATE SANITARY SEWERS

<u>NONCOMPLIANCE</u>	<u>CIRCUMSTANCES</u>	<u>RANGE OF RESPONSE</u>
Missed interim date in CDCP	Will not cause late final date or other interim dates	LOV
Missed interim date in CDCP	Will result in other missed dates, no good and valid cause	LOV, AO, APO, judicial action
Missed final date in CDCP	Violation due to force majeure	Contact permittee and require documentation of good or valid cause
Missed final date in CDCP	Failure or refusal to comply without good and valid cause	AO, APO or judicial action
Failure to report overflows (as specified in permit)	Isolated and infrequent, health related	Phone call, LOV, AO, APO
Failure to report overflows (as specified in permit)	Isolated and infrequent, water quality and environment related	Phone call, LOV, AO, APO
Failure to report overflows (as specified in permit)	Permittee does not respond to letters, does not follow through on verbal or written agreement, or frequent violation	AO, APO, judicial action, request for criminal investigation
Failure to report permit requirements	Any instance	Phone, LOV, AO, APO

CDCP=Comprehensive Discharge Control Plan